

District courts have jurisdiction to entertain petitions for habeas relief only from persons who are “*in custody* in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3) (emphasis added). The custody requirement is fulfilled when a petitioner is in custody “under the conviction or sentence under attack at the time his petition is filed.” Maleng v. Cook, 490 U.S. 488, 490-91 (1989). Petitioner is not currently in custody under the conviction he wishes to attack. As a result, petitioner is not “in custody” for the purposes of § 2241(c)(3), and the Court

lacks jurisdiction to grant relief. The Court will therefore dismiss the petition without further proceedings. See Fed. R. Civ. P. 12(h)(3); Rule 4 of the Rules Governing § 2254 Cases.

Accordingly,

**IT IS HEREBY ORDERED** that petitioner's motion to proceed in forma pauperis is **GRANTED**.

**IT IS FURTHER ORDERED** that petitioner's petition for habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED**.

Dated this 5th day of October, 2010.

/s/ Jean C. Hamilton  
JEAN C. HAMILTON  
UNITED STATES DISTRICT JUDGE